

## Guidance for MS4 Permit Amendments incorporating previously permitted systems stormwater systems

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The MS4 General Permit (#3-9014) requires that municipalities with small municipal separate storm sewer systems that discharge to stormwater impaired streams prepare Flow Restoration Plans (FRP) to meet the stormwater TMDLs and Water Quality Standards for those streams. As part of this process, municipalities must submit to the Secretary plans for addressing those facilities with expired state stormwater permits discharging to their MS4 systems. They may either request that the Secretary exercise Residual Designation Authority (RDA) and require NPDES permits for these facilities, OR they may incorporate the expired facilities into their authorizations under the MS4 General Permit. A municipality's plan for addressing the expired permits must ensure that all permitted facilities demonstrate compliance with the existing expired permit, at a minimum, and ensure that these facilities will be incorporated into the FRP.

To respond to the MS4 permit requirement, a provision was added to VSA §1264 during the 2015 legislative session. Act 64 amended State Statute 1264 for Stormwater Management to exempt the requirement for state operational permit coverage for new, redeveloped and 3 acre designated impervious parcels, if the MS4 incorporates the stormwater treatment system into its MS4 Authorization.

VSA §1264 (d)(2) No permit is required under subdivision (c)(1), (5), or (7) of this section and for which a municipality has assumed full legal responsibility as part of a permit issued to the municipality by the Secretary. As used in this subdivision, "full legal responsibility" means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

The MS4 may apply to incorporate previously permitted stormwater systems into the MS4 authorization by submitting the following: a new NOI, an MS4 Incorporation Form for each state stormwater permit, and an updated SWMP that lists the stormwater systems for which the MS4 has assumed responsibility. The application materials will be reviewed and noticed for public comment for a period of 30 days. Following notice, response to comments, and approval, the Department will issue an amended authorization to the MS4 and will terminate the state stormwater permits incorporated by the MS4.

As part of the application to incorporate an existing state stormwater permit, the MS4 must demonstrate that existing expired permits will meet the terms of the expired permit, at a minimum, within 24 months. For projects that have stormwater systems that were not constructed, or that are substantially deteriorated, and that will be upgraded to meet a higher standard as part of the Flow Restoration Plan (FRP), provided a system is under an approved schedule for upgrade beyond the originally-permitted design, then such a plan exceeds the requirement that the system be brought into compliance with the existing expired permit.

Following authorization, the MS4 shall report on the annual inspection and maintenance of the incorporated facility(ies) in the MS4 Annual Report.